

AMENDING THE ACT OF JUNE 27, 1960 (74 STAT. 220), RELATING TO THE PRESERVATION OF HISTORICAL AND ARCHEOLOGICAL DATA

APRIL 11, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H.R. 296]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 296) to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That the Act entitled "An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam", approved June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), is amended as follows:

(1) In section 1, after "result of" insert "(1)" and delete "agency." and insert "agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program."

(2) In section 2, change "Sec. 2. (a)", to "Sec. 2."; after "Secretary of the Interior" insert "(hereafter referred to as the 'Secretary')"; and delete all of subsection (b).

(3) Add the following new sections:

"Sec. 3. (a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

"(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any non-federally owned lands.

"Sec. 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

"(b) No survey or recovery work shall be required pursuant to this section which, in the determination of the head of the responsible agency, would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

"(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity or program in all other cases.

"(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or non-federally owned land."

(4) In section 2, change "Sec. 2. (c)" to "Sec. 5. (a)" and change "instigating agency" to "agency responsible for funding or licensing the project" and delete "agency." and insert "agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement."

(5) Delete subsection 2(d).

(6) In section 2, change "Sec. 2. (e)" to "Sec. 5. (b)".

(7) In section 5, add the following new subsection:

"(c) The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Interior and Insular Affairs Committees of the United States Congress indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof."

(8) Redesignate "Sec. 3" as "Sec. 6" and change paragraphs (2) and (3) to read as follows:

"(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

"(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency."

(9) Delete all of section 4 and insert the following:

"Sec. 7. (a) To carry out the purposes of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than one per centum of the total amount authorized to be appropriated for such project, except that the one per centum limitation of this section shall not apply in the event that the project

involves \$50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

"(b) for the purposes of subsection 3(b), there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; and \$1,500,000 in fiscal year 1978."

"(c) For the purposes of subsection 4(a), there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; and \$3,000,000 in fiscal year 1978."

PURPOSE

The purpose of H.R. 296 as introduced by Representative Charles Bennett and numerous companion measures cosponsored by 128 Members of the House of Representatives¹ is to expand the application of the 1960 Act providing for the preservation of historical and archeological data to include all Federal or federally assisted construction projects, rather than being limited to Federal dam and reservoir sites.

As amended by the Committee, the application of the Act would be broadened, but the Secretary of the Interior would be charged with a more direct responsibility in coordinating and administering the overall effort. Unlike the present law, which is limited in its scope, the legislation recommended would extend the survey and salvage efforts to include many Federal projects and programs, including airport and road construction, Federal housing projects, and other Federally licensed or assisted projects where significant values are discovered or are believed to exist. Under the terms of the bill recommended, however, no survey or recovery work is required if such activities would impede a project undertaken as a result of a natural disaster. Also, as recommended, in the event that such recovery efforts result in the loss of use of any private or non-Federal property or result in construction delays, the injured parties are to be compensated for the losses sustained unless otherwise agreed.

¹ The bills before the Committee included:

- H.R. 296 by Representative Bennett.
- H.R. 538 by Representative Fuqua.
- H.R. 1880 by Representative Saylor.
- H.R. 2121 by Representative Price of Illinois.
- H.R. 3222 by Representative Annunzio.
- H.R. 3555 by Representative Dulski.
- H.R. 3582 by Representatives Bennett, Alexander, Anderson of Ill., Ashbrook, Badillo, Bafalls, Beard, Bingham, Bolling, Broomfield, Brown of Calif., Burlison of Mo., Casey of Tex., Don H. Clausen, Del Clawson, Cleveland, Collier, Collins, Conable, Corman, Coughlin, Cronin, Davis of Ga., Dellenback, Derwinski.
- H.R. 3583 by Representatives Bennett, Donohue, Dorn, Eshleman, Fascell, Fisher, Frenzel, Goldwater, Gonzalez, Grasso, Gude, Haley, Hammerschmidt, Hansen of Wash., Hansen of Idaho, Harrington, Harvey Hechler of W. Va., Helstoski, Henderson, Hicks, Holt, Hungate, Ichord and Johnson of Pa.
- H.R. 3584 by Representatives Bennett, Johnson of Calif., Jones of Okla., Kastenmeier, Keating, Koch, Lehman, Litton, McClory, McCloskey, McKinney, McSpadden, Maillard, Mann, Matsunaga, Mayne, Mazzoli, Melcher, Mink, Mollohan, Moorhead of Calif., Moorhead of Pa., Mosher, Moss and Murphy of N.Y.
- H.R. 3585 by Representatives Bennett, Nedzi, O'Hara, Owens, Parris, Pepper, Pike, Podell, Preyer, Rarick, Rees, Riegle, Robinson of N.Y., Rodino, Rooney of Pa., Runnels, Sarbanes, Scherle, Selberling, Shoup, Sikes, Slack, Smith of N.Y., Spence, Steele.
- H.R. 3586 by Representatives Bennett, Stelger of Ariz., Stephens, Symington, Talcott, Thone, Thornton, Tiernan, Treen, Udall, Vander Jagt, Whitehurst, Wolff, Wyatt, Yatron, Young of Fla., Young of S.C., Zwach and Andrews of N. Dak.
- H.R. 3205 by Representatives Bennett, Frey, Kuykendall, Roy and Yates.
- H.R. 3489 by Representative Burton.
- H.R. 3585 by Representative Roe.
- H.R. 6230 by Representative Esch.
- H.R. 6271 by Representative Rhodes.
- S. 514, a similar bill approved by the Senate.

LEGISLATIVE HISTORY

During the 92nd Congress, legislation comparable to H.R. 296 was considered by the authorizing Committees of both Houses of the Congress. The Subcommittee on National Parks and Recreation conducted thorough hearings in September, 1972, and further hearings were held in July 1973. Subsequently, the Subcommittee met on three different occasions to consider the legislation in detail before finalizing its recommendations for the Committee on Interior and Insular Affairs.

During the hearings and in the departmental reports, numerous amendments were suggested and discussed. A great deal of concern was expressed about the possible costs and ramifications of this program. As a result, the terms of the bill were substantially re-written by the Subcommittee before being considered by the Full Committee. In working out this language, the Committee concluded:

- (1) That the objective of the legislation was desirable;
- (2) That the bill should be drafted as an amendment to existing law rather than repeating provisions of the present Act;
- (3) That the language of the bill should be substantially revised in order to avoid undue interference or delay of Federal projects and programs and in order to give the Secretary of Interior more direct responsibility in terms of conducting and coordinating archeological survey and salvage work;
- (4) That, in order to maintain adequate oversight functions, the Secretary should make annual reports to the Congress indicating the problems and accomplishments of the program;
- (5) That, where Federal loan or grant programs are involved, the Secretary could, with the consent of those having a legal interest in the property involved, conduct archeological survey and salvage programs and could compensate them for any losses due to delay or to the temporary loss of the use of the property;
- (6) That the program should be periodically reviewed by the Congress and carefully controlled by limiting its initial duration to 5 years and by authorizing limited appropriations in annual installments.

BACKGROUND

In recent years, numerous proposals have been introduced to broaden the existing program relating to the discovery and recovery of historic, scientific, archeological and paleontological materials which could be destroyed as a result of direct or indirect Federal support of construction activities or other activities which result in a substantial alteration of the terrain.

Existing law (PL 86-523) provides for the recovery of archeological materials which might be affected by the construction of Federal water projects. Under that Act, the construction agency is required to notify the Secretary of the Interior concerning its plans (except projects involving less than 5,000 acre-feet retention capacity.) When notified, the Secretary is required to make a survey of the area "as expeditiously as possible", and if significant values are found he is to provide for their recovery. In carrying out this Act, the Secretary is authorized to enter into contracts, procure expert assistance and utilize do-

nated or appropriated funds to conduct the program. For fiscal years 1973, 1974, and 1975, the cost of this effort has required an appropriation totaling about \$1,780,000 annually.

H.R. 296 would broaden and revise this program by making it applicable to all Federal construction programs and all programs licensed or otherwise assisted by Federal agencies. In many cases, the cost of the salvage program would be considered a project cost, but the survey and salvage work could be transferred to the Secretary of Interior if the agency involved chooses not to do it. Except for projects involving less than \$50,000, no more than 1 percent of the project funds could be used for this purpose.

NEED

Evidence of prehistoric and early historic periods which is buried in the ground is, with increasing frequency, endangered by the efforts of modern man. These losses are seldom caused intentionally, but result from growing pressures upon the land for farm products and minerals or from increased needs for water, housing, highways, and many related developments. Once they are gone, of course, these hidden resources are lost forever. To be sure, some artifacts or specimens may be found and preserved, but their contributions to understanding an early society or a way of life are nominal unless they are scientifically excavated and recorded. It is only when taken in context that artifacts contribute significantly to the knowledge and interpretation of prehistoric periods.

Much of the loss of these nonrenewable resources can be avoided by proper advance planning and survey work. Sometimes, where a significant area is known to exist, projects could be relocated without substantially interfering with the end result. Preservation of archeological, paleontological, and other historic and scientific sites is nearly always considered preferable to their excavation unless the data is considered critical to current studies. In some cases, however, there are no alternatives to the destruction of the site. In such situations, prompt and careful surveys can determine what course of action should be taken and proper excavation techniques can salvage and preserve the materials found. It is the achievement of this end which H.R. 296 seeks to accomplish.

Since the early part of this century, the Federal Government has taken an interest in protecting and preserving the historic, cultural and scientific heritage of the nation. The 1906 Antiquities Act, the 1935 Historic Sites Act, the 1960 Reservoir Salvage Act, and the 1966 Historic Preservation Act are all manifestations of Congressional concern in this regard. By enacting H.R. 296, as amended, the Congress will take another significant step forward in this field by placing increased responsibilities on Federal agencies, programs and projects which may be causing substantial losses of these nationally valuable resources.

The burdens imposed by H.R. 296 are not too severe. They require Federal agencies to be cognizant of historic and scientific values, to take them into account in the early planning processes, and to provide adequate time and funds for specific survey and salvage operations. Presently, several Federal agencies employ scientists qualified to do the necessary work, and the Secretary of the Interior (through the

National Park Service) is responsible for maintaining expertise of historic and prehistoric resources. It is this basic expertise which has made it possible to undertake the recovery of such resources at Federal reservoir and damsites. The National Park Service cannot, however, under its present authority and capability assume the responsibility of recovering these resources at all sites endangered as a result of Federal activities.

By way of example, the report of the Department of Interior specifically cites the need for this legislation. It indicates that "significant remains were destroyed by Federal, federally assisted, or federally licensed projects because there was either insufficient statutory authority or insufficient leadtime for advance funding." It specifically cites five examples where significant values could have been saved if adequate authority (such as that contained in H.R. 296) existed.

COMMITTEE AMENDMENT

The Committee amendment, in the nature of a substitute, is consistent with the overall objective of H.R. 296, as introduced, but it restructures the text of the bill and places increased responsibilities in the Secretary of the Interior. While it seeks to cover virtually all Federal undertakings, the language of the bill has been clarified so as not to impose unreasonable burdens on Federal agencies and programs. The amendment is discussed, in context, in the Section-by-Section Analysis below.

SECTION-BY-SECTION ANALYSIS

An Analysis of Public Law 86-523 As It Would Be Amended by H.R. 296 (as amended), If Enacted.

[NOTE: In order to fully explain the program, the Section-by-Section Analysis includes references to existing law. To the extent that substantive changes are involved, the analysis indicates the differences between present law and the proposed amendment.]

Section 1

Public Law 86-523, as an extension of the Historic Sites Act of 1935, declared that where the construction of Federal or Federally licensed dams, reservoirs and related activities might result in the loss of historical or archeological data, it should be the policy to preserve and recover such information. As recommended, this legislation broadens that policy to include any Federal or federally assisted construction projects involving the alteration of the terrain, as well as other Federally licensed projects, or Federal activities or programs which might disrupt such values.

Section 2

Under the existing law (P.L. 86-523), except for relatively small projects, before any Federal agency may license or construct a dam, it must notify the Secretary of the Interior of its project plans. If the project involves less than 5,000 acre-feet of detention capacity or creates a reservoir of 40 surface acres or less, this notice is required only if (1) it finds or (2) is presented with evidence that historical or archeological materials exist or may be present within the project

area. By that Act, when the Secretary received such notice, it was his responsibility to make a survey of the site (as expeditiously as possible) and, if he found significant data to provide for its recovery and preservation. (The operation of this provision would be altered by the proposed legislation to the extent that the funding of the survey and recovery work would often be charged to the project. See section 3.).

Section 3

(a) As indicated, the proposed legislation expands the applicability of the program to all Federal agencies having construction projects. The proposed language, however, is not limited to construction projects, *per se*, so that if a Federal agency finds or is made aware that any Federal program or federally assisted construction project or activity will cause the loss of scientific, prehistorical, historical, archeological or paleontological data, then the agency must notify the Secretary of Interior of this fact and supply him with information relevant to the matter. The agency may request the Secretary to do the survey and recovery work or it may assume the responsibility itself—in which case copies of any reports are required to be submitted to the Secretary. It is the intent of this provision that project monies should be used for such survey and salvage work.

(b) If such values might be irrevocably lost, where Federal financial assistance (loan, grants, etc.) is provided to a private person, association or public entity, the Secretary may utilize funds appropriated to him for survey and salvage work at the site(s) involved if those having a legal interest consent. If any loss results to those involved the Secretary must compensate those who suffer damage, unless there is a written agreement to the contrary.

Section 4

(a) If the Secretary is notified by a competent authority that historical, archeological, or paleontological resources are being or may be irrevocably lost at a Federal, federally assisted or licensed project or under a federal program and if he determines that the loss would be significant, then he must (1) notify the agency of this fact and (2) effect a survey of the area and recover any data which he determines should be preserved in the public interest.

(b) Where emergency programs (including projects related to natural disasters) are involved, no recovery or salvage work is required if such activities would impede the emergency effort.

(c) When the Secretary assumes the survey and salvage responsibilities, then he must initiate such efforts within sixty days in order to avoid undue delay of the project or program.

(d) If any private person, association or public entity sustains a loss due to delay caused by the survey and salvage operations, compensation for the loss incurred shall be paid by the Secretary unless otherwise agreed in writing.

Section 5

(a) Under present law, the Secretary is required to keep the affected agency involved apprised of the progress on the survey and salvage program in order to avoid undue delay. The present proposal would

add to that a provision allowing the Secretary and the agency involved to reach a mutual understanding with respect to the date of termination of the salvage program.

(b) Pursuant to existing law, the Secretary is to consult with all interested parties to determine the ownership of and the repository for any artifacts recovered.

(c) The proposed language places additional responsibilities on the Secretary to coordinate the program and it requires him to report annually to the appropriate Congressional Committees concerning the scope, effectiveness, and cost of the program.

Section 6

As originally contemplated by P.L. 86-523, this proposal permits the Secretary to enter into contracts with other agencies, educational or scientific organizations or qualified individuals to carry out the functions assigned to him; to hire experts and consultants in accordance with existing law; and to accept and utilize funds donated or transferred to him to carry out this program.

Section 7

(a) Unlike the unlimited authorization of the existing Act, the proposed language attempts to place reasonable limitations on the survey and salvage program. Where Federal construction projects are directly involved, up to one per centum of the amount authorized to be appropriated for the project may be expended for such survey and salvage work. Naturally, the amount in such cases may be less, or, if no values are known or believed to exist, may be *nil*. If small projects are involved (i.e. projects involving \$50,000 or less), the one per centum limitation is not applicable and a larger portion may be dedicated to this purpose. In either case, the constructing agency may conduct the program or it may transfer the funds to the Secretary of Interior to conduct the survey and/or recovery effort. In the case of water development projects, such costs are to be considered nonreimbursable project costs.

(b) In cases where Federal loans, grants, or other programs involving lands of individuals, associations, or other public entities are involved, the Secretary may utilize funds appropriated to the Department of Interior for the survey and salvage program. This phase of the program is limited to annual installments and must be renewed if it is to continue after fiscal year 1978. Altogether, the bill authorizes a direct appropriation for this aspect of the program totaling \$6 million for the 5 fiscal years covered by the bill.

(c) At the present time, the Secretary, under existing authorities, is utilizing slightly less than \$2 million annually for survey and salvage work at existing reservoir sites. During the transition period, until Federal agencies can budget funds for such purposes, the Secretary will probably continue to fund much of this cost through direct appropriations. The bill authorizes a total of \$10 million for this phase of the program over the 5 fiscal year period. At the end of that time the Congress can review these needs and determine whether or not additional authority is appropriate.

Cost

Under the terms of the present law, the Secretary of the Interior conducts archeological salvage efforts at dam and reservoir areas. For this program, he seeks direct appropriations. Under H.R. 296, as amended, the construction agencies would be permitted to use up to one percent of the project funds authorized to be appropriated for survey and recovery of historical and scientific (including archeological or paleontological) resources. In addition, where Federal loan or grant programs are involved, the Secretary is authorized by the bill to seek appropriations totaling \$6 million over a 5 year period to undertake survey and salvage operations directly. To cover anticipated ongoing costs of the existing program where Federal construction is involved, the bill authorizes \$10 million to be appropriated in annual installments over the 5 year period.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by a voice vote, approved H.R. 296, as amended, and recommends its enactment by the House of Representatives.

DEPARTMENTAL REPORTS

In considering this legislation, the Committee solicited the views of several Federal Departments and received comments from the Department of the Interior, the Department of Agriculture, the Department of Housing and Urban Development, and the Department of the Army. The Committee took the various amendments suggested by these agencies into consideration in developing the new text for the bill. The reports follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 27, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 296, a bill to amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data, and on identical bills H.R. 1880, H.R. 2607 (identical except title), H.R. 3222, H.R. 3555, H.R. 3582, H.R. 3583, H.R. 3584, H.R. 3585, and H.R. 3586, as well as on similar bills, H.R. 538 and H.R. 2121. We recommend enactment of H.R. 296 or one of the bills identical to it, if amended as suggested in this report.

The Act of June 27, 1960 (74 Stat. 220), provides that before any agency of the United States undertakes the construction of a dam, or issues a license for that purpose, it shall give written notice to the Secretary of the Interior. Upon receipt of such notice, the Secretary is directed to survey the affected area and ascertain whether historical and archeological data exist and should be preserved, and if so, to col-

lect and preserve such data. The Act authorizes the appropriation of such sums as may be necessary to carry out its purposes.

H.R. 296 will amend the 1960 Act by re-enacting its major provisions, but with the following significant changes: (1) broadening the scope of activity that will give rise to a salvage program to include not only dam construction but any Federal, federally assisted, or federally licensed project, program, or activity; (2) authorizing the Secretary to conduct a survey and salvage program upon notification not only by the responsible agency but also upon notification by any other Federal or State agency or appropriate societies or individuals who are recognized historical or archeological authorities; and (3) authorizing the responsible agency to expend program activity funds for recovery, protection, and preservation of data, or upon request of the Secretary to transfer to him up to 1 percent of the amount appropriated for the activity (or more than 1 percent in the case of certain small projects) in order to enable the Secretary to conduct the survey and salvage required. A Federal agency, when it finds or is made aware by an appropriate historical or archeological authority that its project, or a project assisted or licensed by it, adversely affects significant historic or archeological data, must notify the Secretary of the Interior. The agency may either request the Secretary to carry out salvage operations, or may do so itself. This notice requirement is, of course, supplementary to, and does not supersede, the requirements with respect to properties listed on the National Register, contained in the National Historic Preservation Act of 1966, (80 Stat. 915, 917).

The Secretary of the Interior, under the 1960 Act through the National Park Service has spent approximately \$1.2 million per year on historical and archeological surveys and recovery of data located at proposed Federal or federally licensed dam and reservoir sites.

A major problem in conducting an adequate program of salvage archeology is the great increase in recent years of the number of small construction projects which are injurious to archeological values. The existing legislation is not adequate to deal with these smaller projects for two reasons. First, a number are unrelated to dam and reservoir construction—for example, they involve construction of roads and other developments on Indian lands, or construction in connection with defense programs. Second, the traditional method of advance programming by the National Park Service for individual projects does not work well for these small projects. For instance, the Soil Conservation Service is conducting activities affecting archeological values in its watershed program carried out under authority of the Watershed Protection and Flood Prevention Act (68 Stat. 666; 16 U.S.C. 1001), as amended. This Act authorizes Federal assistance to qualified local organizations to conserve and improve water and related resources in watersheds not exceeding 250,000 acres in size. By June 1972, 1,060 projects had been authorized. The projects are for the most part small, and involve Federal assistance to local organizations. Because of the large quantity of small projects and minimal leadtimes, which make communication between the Department and individual project organization difficult, advance salvage funding is unsatisfactory. We believe that the Soil Conservation Service should

be authorized instead to provide funding for salvage work on an actual need basis at the time of construction.

Following are several instances where significant remains were destroyed by Federal, federally assisted, or federally licensed projects because there was either insufficient statutory authority, or insufficient leadtime for advance funding.

1. At a Soil Conservation Service Watershed project in Montana, a bison kill site known as the Beaver Creek Site, a Late Plains Indian manifestation, was totally destroyed because of lack of leadtime, which made impossible advance programming by the National Park Service. The Soil Conservation Service does not itself have authority to expend program funds for salvage work.

2. In Missouri, the National Register Site known as Lillbourn, a Late Mississippian Site, was partially destroyed by a 60 percent federally financed school construction project. There was no statutory authority to expend school construction funds for salvage, and the project, of course, did not come within the authorizations of the 1960 Act.

3. In Oregon, the HUD urban renewal project in the city of Cascade Locks completely destroyed one of the last remaining important archeological sites on this portion of the Columbia River. The Department of Housing and Urban Development can expend funds for historic preservation, but not for archeological salvage work.

4. Construction of the Southwest International Airport, Fort Worth, Texas, undoubtedly destroyed some archeological remains in this largely unstudied area, where any archeological remains would be significant.

5. Construction of roads and other features at Fort Bliss, Texas (and doubtless other military installations), has destroyed known sites of archeological significance. There are no salvage funds now available for such projects.

It appears, therefore, that there is a need to provide a more flexible basis for conducting surveys and recovery of data than is afforded by the 1960 Act. By broadening the Federal activity subject to survey, and by permitting the responsible agency to transfer funds, up to 1 percent of the total appropriated (or more in specific instances) on the basis of need, we believe H.R. 296 will greatly assist our ability to recover significant historical and archeological data. In addition, by allowing the Secretary or responsible agency to act on information furnished by other public and private agencies, H.R. 296 will improve the information on the basis of which the Secretary or responsible agency can act.

If the contemplated program is to be effective, the funds required for the protective activities should be available in advance of any construction activities. Generally speaking, appropriations for a project are spread out over a period of years. We intend, to the extent possible, to request appropriation of the full amount authorized for the recovery, protection, and preservation of the data prior to initiation of the project. To the extent that other agencies may ask this Department to recover and preserve the data, we would expect them to request the full amount authorized in their appropriations so that the funds may be transferred promptly.

Of course, under the terms of H.R. 296, project construction agencies may prefer to undertake salvage work themselves, without transferring funds to this Department. For example, agencies of the Department of Agriculture might choose this course. We would hope, however, that in so doing, other such agencies would program salvage funds well in advance of construction activities.

While H.R. 538 and H.R. 2121 are similar to H.R. 296, we favor enactment of the latter because we believe it contains a number of refinements which will aid in administration of the archeological salvage program. For example, it permits more than 1 percent of project funds to be used in the case of small projects which cause extensive scientific, prehistorical, historical, or archeological damage. Such flexibility for small projects is needed because 1 percent of the cost of a small project might fall far short of data collection costs if the project directly impacted an area of archeological or historic significance. Other useful refinements contained in H.R. 296 are (1) the use of the term "appropriate historical or archeological authority" in place of "responsible authority", a more precise definition of the type of organization or person that can bring the need for preservation of data to the Government's attention; and (2) a deletion of the requirement in section 3(b) that the Secretary "immediately" conduct a survey and recover and preserve data, and the substitution of requirements that in the event that the Secretary is requested by an agency to undertake recovery work he shall initiate action within 60 days or, that in all other events, he shall begin within the time agreed upon with the responsible agency.

We do, however, suggest an amendment to H.R. 296, which would make the cost of survey, recovery, analysis, and publication, a reimbursable project cost, to be borne by the grantee under Federal grant-in-aid programs. We believe that the cost of salvage is one which should be allocated to the individual project in all cases. We suggest, therefore, that the proviso of section 3(b) be amended to read:

"Provided, That the costs of such survey, recovery, analysis, and publication shall be considered project costs allocated to the several project purposes. An appropriate share, as determined by the responsible Federal agency, of the costs of survey, recovery, analysis, and publication shall be borne by the grantee in the case of projects, activities, or programs funded under Federal grant-in-aid programs."

We would also like to suggest several drafting changes in the bill which will avoid any questions in interpretation of the bill.

- We would suggest amending section 1 so that the standard of damage to archeological data in that section conforms with that in the body of the bill. Specifically, page 2, line 8, should be revised to read "be adversely affected as the result of (1) flooding," thus deleting the present "irreparably lost or destroyed" standard.
- We would suggest amending section 3(d) so that the language concerning types of Federal activities affected by the bill follows exactly that in section 3(a). Page 5, lines 17-20 could be revised to read "any Federal, federally assisted, or federally licensed project, activity, or program, including dams, which has been heretofore authorized."

- We would suggest amending section 3(b) to make it clear that the 1 percent of funds permitted to be transferred to the Secretary is 1 percent of the funds *authorized* to be appropriated. Page 4, line 20, could be amended to read "exceed one per centum of the total amount authorized to be appropriated for".
- Sections 2 and 3(a) are somewhat duplicative. We would suggest combining these, by amending the language of section 3(a) as set out below, deleting section 2, and renumbering subsequent sections accordingly. The following language could be added at the end of the first sentence of section 3(a), "*Provided, That a Federal agency which undertakes the construction of a dam which is a floodwater retarding dam providing 5,000 acre-feet or more of detention capacity or any other type of dam which creates a reservoir of forty surface acres or more, or issues a license to any private individual or corporation for the construction of such a dam shall in every case give prior written notice to the Secretary of the Interior (hereinafter referred to as the Secretary) setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken.*"

Such language would make it clear that the Secretary must be notified in the case of large Federal or federally licensed dam projects, whether or not the Federal agency is aware of adverse effects on significant archeological, scientific, prehistorical, or historical data, but need only be notified in other cases when the responsible Federal agency finds or is made aware of adverse effects on such data.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN H. KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 30, 1973.

HON. JAMES A. HALEY,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in response to your letter of February 21, 1973, requesting the views of this Department on H.R. 296, H.R. 538, H.R. 1880, H.R. 2121, H.R. 3222, H.R. 3555, and H.R. 3582-3586, bills to amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data, and on H.R. 2607, a bill "To amend the Act entitled 'An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam,' and for other purposes."

This Department recommends that these bills not be enacted unless several significant points are clarified.

The Act of June 27, 1960, presently provides that the Secretary of the Interior will survey and arrange for the preservation of historical and archeological data which might otherwise be irreparably lost or destroyed as a result of the construction of Federal dams or federally licensed dams.

These bills would broaden the Act in the following ways—

In addition to the presently covered dams, coverage would be extended to any alteration of the terrain caused as a result of any Federal, federally assisted, or federally licensed activity or program. The provisions of the bills could be interpreted to have retroactive effect in connection with any uncompleted dam, project, activity, or program previously authorized.

Presently historical and archeological data are covered. These bills would add scientific and prehistorical data.

Presently, only such data "which might otherwise be irreparably lost or destroyed" are covered. These bills change the coverage on pages 3 and 4 to data which might be "adversely affected."

The bills would authorize not to exceed one per centum of the total amount appropriated in connection with such project, activity or program to be transferred to the Secretary of the Interior to survey, investigate and preserve such data, or a larger amount as mutually agreed upon by the Secretary of the Interior and the responsible Federal agency for smaller projects which cause extensive damage to such data. H.R. 1880, and identical bills, also provide that an appropriate share of the costs would be borne by the grantee in cases involving Federal grant-in-aid programs.

Clarification is needed as to the intent of the provision on page 4 concerning the specified amount to be transferred for a project, activity or program for investigation, recovery and preservation of such data, with respect to the unit of activity which the one per centum specified in the bills would apply.

That part of the proposed amendment (item (2), page 2) specifically, "any alteration of the terrain caused as a result of any Federal, federally assisted, or federally licensed activity or program" needs clarification as to the areas of applicability. As written, this provision could be construed as applying to essentially every activity of the Federal Government—defense, space, natural resources, agriculture, commerce and transportation, community development and housing, health, education, etc.—wherein Federal assistance, directly or indirectly, resulted in action altering the terrain.

Clarification is needed on the definition of "responsible agency," particularly in regard to cases involving (a) multiagency assistance or (b) indirect Federal assistance.

These bills would authorize the operating Federal agency to make the surveys and investigations relating to the archeological and other data and to take recovery and preservation action on other than major dam construction projects. We agree that in those cases where agencies have or can obtain the capability of evaluating archeological and related data they should have the opportunity to do so directly. This will enable these agencies to better plan and control the timing and progress of programs and projects affecting such data and at the same time fulfill their responsibilities as to the quality of the environment.

The Forest Service presently has the capability to perform archeological investigations on the National Forests and to take action to preserve archeological data. In other situations, the Department works with the Department of the Interior, local historical and archeological associations and universities in evaluating the impact of projects and programs on historical and archeological data.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

THE GENERAL COUNSEL OF HOUSING AND
URBAN DEVELOPMENT,
Washington, D.C., August 1, 1973.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

Subject: H.R. 296 (Bennett), H.R. 538 (Fuqua), H.R. 1880 (Saylor), H.R. 2121 (Price of Illinois), H.R. 2607 (Mills of Arkansas), H.R. 3222 (Annunzio), H.R. 3555 (Dulski), H.R. 3582, 3583, 3584, 3585, 3586 (Bennett, et al), 93d Congress

DEAR MR. CHAIRMAN: This is in further response to your request for our views on the above-listed bills, each of which would broaden the Act of June 27, 1960, which provides for the preservation of historical and archeological data exposed to loss from dam construction. This Department endorses the general objectives of this legislation to preserve historical, archeological and other significant data which might be lost as the result of Federal or federally assisted construction activities. We defer to the Department of the Interior concerning the specific merits of these bills. However, there are a number of clarifications and changes which we believe should be made in the bills.

First

A broad range of Federal, federally assisted, and federally licensed activities and programs may be affected by this legislation. However, nowhere in any of the bills is there a definition of what is a "federally assisted" or "federally licensed" project, activity or program. Accordingly, we are unclear as to whether, for example, projects, activities and programs which are assisted by guarantee or insurance, such as private new community or housing projects financed with the aid of HUD loan guarantees or mortgage insurance, would be encompassed by the those terms. The reference in Sec. 3(b) of the bills to "the total amount appropriated" for projects, activities or programs might indicate an intent not to include the guarantee or insurance programs since these programs are not financed by appropriated funds, but this is the kind of issue which we think should be dealt with specifically. Because of the broad wording of the bills, there is also the possibility that some might interpret them as applying to projects and activities undertaken by States or localities with funds made available through

revenue sharing. We believe that the result of such an interpretation would be highly undesirable and again suggest the desirability of some clarification as to coverage.

Second

Related to our concern over just what programs might be affected by these bills is their apparent potential for delaying various kinds of projects. As written, the bills are unclear as to whether an actual cessation of project activities is required pending completion of a survey and related activities. Each bill now merely provides that the Secretary of the Interior keep the instigating agency notified of the progress of these activities, and, except for H.R. 538 and 2121, that he initiate action within a specified time after notification.

We realize the difficulty of imposing a specific time limit of general applicability where the length of time required for survey and recovery work is likely to vary greatly, depending upon the nature of the activities to be undertaken. However, if the existing Act is to be expanded to cover federally assisted projects, we feel that measures to avoid excessive delay and uncertainty resulting from survey and related activities should be specifically addressed. Otherwise, the potential delay could add greatly to project costs, impede or perhaps prevent the completion of a project and in some cases discourage owners of property containing data that might be preserved from seeking the Federal assistance which would result in such preservation.

One possible provision for dealing with this kind of problem might require the Federal agencies involved to enter into an agreement with assisted private parties or State or local public bodies specifying a reasonable time in each case for completion of the survey and recovery effort. Also, consideration might be given to providing for compensation in appropriate cases where assisted public or private parties would otherwise bear in whole or substantial part the cost of long interruptions in project activities.

Third

It is unclear as to whether the determination as to the practicability of undertaking a survey and related activity in the case of already authorized projects is to be made by the Secretary of the Interior or the instigating agency. We feel that this determination should be made by the Federal agency responsible for the project, and would be opposed to having the Secretary of the Interior make this determination in the case of programs administered by this Department.

Fourth

All bills, with the exception of H.R. 538 and 2121, would, as presently drafted, result in a possible duplication of effort by the instigating agency and the Secretary of the Interior where the instigating agency undertakes a survey and other activities directly. In these instances, the instigating agency would still be required to notify the Secretary of the Interior who, in turn, is also required "upon notification by any such agency" to undertake a survey or investigation if he determines that the data in question may be adversely affected, whether or not the instigating agency has undertaken a survey.

Fifth

In connection with those provisions of the bills regarding transfer by the instigating agency to the Secretary of the Interior of funds to enable him to undertake the survey and related activities, H.R. 1880 specifically provides that the cost of these activities shall be considered project costs to be shared accordingly by the local grantee. With respect to the remaining bills, the effect of the reimbursement provisions on local grantees in cost sharing programs of this Department is unclear, and some clarification of intent would be in order. In our opinion, rather than conditioning an otherwise desirable project on a grantee's ability or willingness to share in costs of the investigation and recovery, reimbursement should be made to the Secretary of the Interior entirely from Federal funds since the resulting preservation of data could, depending on its disposition, benefit other localities or the Nation as a whole rather than the grantee locality.

Sixth

As to the amount of funds that can be transferred to the Secretary of the Interior, the one percent limitation on the amount "appropriated" for a project, activity or program should be modified in the case of federally assisted projects, since funds ordinarily are not appropriated for specific federally assisted "projects". Funds are appropriated for federally assisted "programs", but the provision would not be meaningful as a limitation on what can be done with respect to specific projects if the one percent figure were applied to program appropriations. In this regard we also feel that a limitation of reasonableness should be imposed on survey and other expenses for which the Secretary may request reimbursement from other agencies.

Consideration should also be given to specific provisions covering the source of funding such reimbursement in those projects involving grant assistance given in terms of an interest subsidy and, if the bill is intended to encompass these activities, new community, housing or other projects financed by loan guarantees or mortgage insurance. In the case of interest subsidy programs the Federal payment is not based on project costs. The loan guarantee and mortgage insurance projects, as previously mentioned, are not financed by appropriated funds.

Assuming changes are made to reflect the above comments, we would have no objection to enactment of any of the bills.

The Office of Management and Budget has advised us that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT R. ELLIOTT,
JAMES L. MITCHELL

DEPARTMENT OF THE ARMY,
Washington, D.C., August 20, 1973.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Secretary of Defense on H.R. 296, 538, 1880, 2121, 2607, 3222,

3555, 3582, 3583, 3584, 3585, and 3586, 93d Congress, bills to amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data." The Department of the Army has been assigned responsibility for reporting on these bills.

H.R. 538 and H.R. 2121 are identical bills; H.R. 296, 2607, 3222, 3555, 3582, 3583, 3584, 3585, and 3586 are identical bills; and H.R. 1880 is similar to the provisions of the latter bills.

The Act of June 27, 1960 (74 Stat. 220), which the bills would amend provides for the salvage of historical and archeological remains being flooded or destroyed by dams constructed or licensed by the Federal Government. It requires that before any agency of the United States undertakes or issues a license for the construction of a dam, it must give written notice to the Secretary of the Interior setting forth the site of the proposed dam, and the approximate area to be flooded. The Secretary of the Interior is directed to conduct a survey of the area to be flooded to ascertain whether the area contains historical and archeological data which should be preserved, and if so, to perform work to collect and preserve the data. The Act provides for similar surveys and work in connection with any dam authorized prior to the date of enactment.

These bills would amend the Act in two respects. First, they would extend the scope of its coverage. Second, they would authorize the project agency to expend its own funds to recover or preserve archeological data or to transfer these funds to the Secretary of the Interior for this purpose. However, the provisions of these bills differ in several significant ways.

First, H.R. 538 and 2121 would amend the Act to expand its scope to include Federal, federally assisted or federally licensed activities or programs. They would then authorize the project agency to either expend its funds to recover and preserve archeological data or to transfer these funds to the Secretary of the Interior for this purpose. The funds authorized to be transferred could not exceed one per centum of the total amount appropriated in connection with the agency's activity or program. H.R. 296 *et al.*, and H.R. 1880, though similar to H.R. 2121, would include "project" within the phrase "Federal, federally assisted, or federally licensed activity or program." Since the Civil Works program of the Department of the Army includes surveys and investigations, construction, operation and maintenance in connection with many individual projects, without the addition of the term "project", Section 3 of these bills could be construed to authorize the transfer of one per cent of the total funds appropriated for the entire Civil Works program in connection with the recovery and preservation of archeological data at any one project. For this reason, the Department of the Army prefers the provisions of H.R. 296 and 1880, which precludes this broader interpretation.

A second significant difference is the distinction that H.R. 296 *et al.*, and H.R. 1880 makes between large and small projects. For small projects which cause extensive scientific, prehistorical, historical, or archeological data threatened with extensive damage. The specific amount, however, is subject to the mutual agreement between the project agency and the Secretary of the Interior that such amount is necessary to effect adequate protection and recovery. The Department

of the Army believes that the approach taken by H.R. 296 and 1880 is superior to that of H.R. 538 and 2121 in that H.R. 296 and 1880 would provide more adequate protection for archeological data which might not otherwise be recovered because of the inadequacy of available funds for that purpose.

Finally, these bills differ with respect to their treatment of the costs of investigating, recovering, and protecting archeological data at public works project sites. H.R. 296 *et al.* would provide that such costs be nonreimbursable project costs. H.R. 1880 would provide that such costs be allocated among the several project purposes, so that if any of these purposes are reimbursable, some of the costs associated with the recovery of archeological data would be transferred to the local interests. H.R. 538 and 2121 are silent on this point. With regard to these differences, the Department of the Army notes that the cost of salvage, recovery, analysis, and publication should be considered projects costs and allocated to the several project purposes. Accordingly, the Department of the Army recommends that H.R. 296 be amended to incorporate this feature of H.R. 1880, in lieu of its provision to make such costs nonreimbursable.

It appears that the bills' application to federally licensed projects, activities, or programs would apply to the Department of the Army's permitting authority. Under Section 10 of the Act of October 3, 1899 (33 U.S.C. 403) and Section 404 of the Federal Water Pollution Control Act Amendments (P.L. 92-500) any dredging, filling, or erection of structures in the navigable waters of the United States is prohibited unless authorized by the Secretary of the Army. However, we feel that the permittee, and not this Department, should properly bear the cost of recovering and preserving archeological data as part of the cost of being allowed to perform work in the navigable waters of the United States. Accordingly, the Secretary of the Army would impose such a requirement as a condition to the granting of a permit.

Subject to the above comments, the Department of the Army recommends the enactment of H.R. 296. We suggest, however, as a technical amendment, that in Section 1, the phrase "Federal, federally assisted, or federally licensed project, activity, or program" be substituted for the phrase "Federal, federally assisted, or federally licensed activity or program." This change would provide internal consistency between Section 1 and Section 3, and thereby assure the uniform interpretation of its provisions.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

HOWARD H. CALLAWAY,
Secretary of the Army.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is

enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman) :

ACT OF JUNE 27, 1960 (74 STAT. 220)

That it is the purpose of this Act to further the policy set forth in the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461-467), by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such [agency.] *agency or (2) any alteration of the terrain caused as a result of any Federal construction project or Federally licensed project, activity or program.*

[SEC. 2. (a)] *Sec. 2.* Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior (hereafter referred to as the "Secretary") setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any flood-water retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

[(b)] Upon receipt of any notice, as provided in subsection (a), the Secretary of the Interior (hereinafter referred to as the "Secretary"), shall cause a survey to be made of the area proposed to be flooded to ascertain whether such area contains historical and archeological data (including relics and specimens) which should be preserved in the public interest. Any such survey shall be conducted as expeditiously as possible. If, as a result of any such survey, the Secretary shall determine (1) that such data exists in such area, (2) that such data has exceptional historical or archeological significance, and should be collected and preserved in the public interest, and (3) that it is feasible to collect and preserve such data, he shall cause the necessary work to be performed in such area to collect and preserve such data. All such work shall be performed as expeditiously as possible.]

Sec. 3 (a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing,

and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any non-federally owned lands.

SEC. 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

(b) No survey or recovery work shall be required pursuant to this section which, in the determination of the head of the responsible agency, would impede Federal or federally assisted projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity or program in all other cases.

(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or non-federally owned lands.

[(c)] SEC. 5. (a). The Secretary shall keep the [instigating agency] agency responsible for funding or licensing the project notified at

all times of the progress of any survey made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in carrying out of the functions of such [agency.] *agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement.*

[(d)] A survey similar to that provided for by section (b) of this section and the work required to be performed as a result thereof shall so far as practicable also be undertaken in connection with any dam the construction of which has been heretofore authorized by any agency of the United States, or by any private person or corporation holding a license issued by any such agency.]

[(e)] (b). The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

(c) *The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Interior and Insular Affairs Committees of the United States Congress indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.*

[SEC. 3.] *Sec. 6.* In the administration of this Act, the Secretary may—

(1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

[(2)] procure the temporary or intermittent services of experts or consultants or organizations thereof as provided in section 15 of the Act of August 2, 1946 (5 U.S.C. 55a); and]

[(3)] accept and utilize funds made available for salvage archeological purposes by any private person or corporations holding a license issued by an agency of the United States for the construction of a dam or other type of water or power control project.]

(2) *obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and*

(3) *accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency.*

[SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.]

Sec. 7. (a) To carry out the purposes of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than one per centum of the total amount authorized to be appropriated for such project, except that the one per centum limitation of this sec-

tion shall not apply in the event that the project involves \$50,000 or less: Provided, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

(b) For the purposes of subsection 3(b), there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; and \$1,500,000 in fiscal year 1978.

(c) For the purposes of subsection 4(a), there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; and \$3,000,000 in fiscal year 1978.

